



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,635	05/14/2001	Bengt Krister Olson	59486.000002	7285

7590 03/28/2006
Stanislaus Aksman
Hunton & Williams
Suite 1200
1900 K Street, N.W.
Washington, DC 20006

EXAMINER

SRIVASTAVA, KAILASH C

ART UNIT	PAPER NUMBER
----------	--------------

1655

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/853,635	Applicant(s) OLSON, BENGT KRISTER	
	Examiner Dr. Kailash C. Srivastava	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 01 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 104-133 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 104-133 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Request for continued examination (i.e., RCE) under 37 CFR §1.114, including the fee set forth in 37 CFR §1.17(e), was filed in this application on 28 December 2005 after a Final action mailed 28 January 2005. Since this application is eligible for continued examination under 37 CFR §1.114, and the fee set forth in 37 CFR §1.17(e) has been timely paid, the finality of the previous Office action mailed 28 January 2005 has been withdrawn pursuant to 37 CFR §1.114. Applicants' submission filed 28 December 2005 has been entered. Accordingly an RCE has been established and the action on RCE follows.
2. Applicants' responsive Amendment filed 28 December 2005 is acknowledged and entered. The text of those sections of Title 35 U.S. Code not included in this action can be found in a prior Office action.
3. In view of applicants' amendment and arguments presented in response filed on 28 December 2005 responding to Final Office Action mailed 28 January 2005 Examiner hereby withdraws objections to claims and rejections under 35 U.S.C. §112, first and second paragraphs.
4. Other rejections in the final Action cited *supra* will be reconsidered following response to this Office Action because the amendments filed 28 December 2005 are to be considered under different conditions for patentability than those applied to cancelled claims 1-103.

CLAIMS STATUS

5. Claims 1-103 are cancelled.
6. Claims 104-133 are amended.
7. Claims 104-133 are pending.

Election /Restriction

8. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - Group I, consisting of claims 106, 108-115, 117, 120, 124-127 and 129-131 drawn to a first method to a method to increase or not lessen the collagen synthesis in an individual, classified under Class 424, subclass 777, for example.
 - Group II, consisting of claims 105, 122-123, 128 and 132-133, drawn to a method to increase or not lessen the collagen synthesis in an individual through administering a composition

comprising grape seed extract in a mixture with lycopene and cartilage enzymatic hydrolysate, classified under Class 424, subclass 766, for example.

- Group III, consisting of Claim 107 drawn to a second method to increase or not lessen the collagen synthesis in an individual comprising administering to said individual a composition comprising extracts from different plants, classified under Class 424, subclass 725, for example. classified under Class 424, subclass 725, for example.
- Group IV, consisting of Claim 116 drawn to a third method to increase or not lessen the collagen synthesis in an individual comprising to said individual a composition comprising cartilage enzymatic hydrolysate, grape seed extract oligomeric procyanidol and lycopene, classified under Class 424, subclass 548, for example.
- Group V, consisting of Claim 118 drawn to a fourth method to increase or not lessen the collagen synthesis in an individual comprising to said individual a composition comprising cartilage enzymatic hydrolysate, grape seed extract oligomeric procyanidol, lycopene, *Acerola* extract, microcrystalline cellulose and silicon dioxide, classified under Class 424, subclass 724, for example.
- Group VI, consisting of Claim 119 drawn to a fourth method to increase or not lessen the collagen synthesis in an individual comprising to said individual a composition comprising cartilage enzymatic hydrolysate, grape seed extract oligomeric procyanidol, lycopene, *Acerola* extract, inulin, ascorbic acid, zinc gluconate and silicon dioxide, classified under Class 424, subclass 641, for example.
- Group VII consisting of claim 121 drawn to a method to increase or not lessen the collagen synthesis in an individual through administering to said individual a composition comprising cartilage enzymatic hydrolysate, grape seed extract polyphenolic hydrophilic antioxidant and lycopene constituted in a particular form (e. g., tablet or capsule), classified under Class 424, subclass 400, for example.

Linking Claims

9. Claim 104 links inventions in Groups I-III and VII. The restriction requirement between the linked inventions is subject to the non-allowance of the linking claims, identified above. Upon the allowance of the linking claims, the restriction requirement as to the linked inventions shall be withdrawn and any claims depending from or otherwise including all the limitations of the allowable linking claims will be entitled to examination in the instant application. Applicants are advised that if any such claims depending from or including all the limitations of the allowable linking claims are presented in a continuation or

divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. §121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131- 32 (CCPA 1971). See also MPEP §804.01.

Inventions are Independent and Distinct

10. The inventions are distinct, each from the other because of the following reasons:

Inventions in Groups I-VII are unrelated to each other because each one of them is directed to different inventions that are not connected in design, components, operation and/or effect. These inventions are independent since they are not disclosed as capable of use together. They have different modes of operation, they have different functions, and/or they have different effects. One would not have to practice the various methods at the same time to practice just one method alone (MPEP § 806.04, MPEP § 808.01). In the instant case, for example invention recited in claims encompassed in inventive Group III does not comprise the same ingredients/ or ingredients in same proportions as in for e.g., claims encompassed in Group VI inventive method. Thus, the components and or net effect in each method are different from the other. Therefore, the methods claimed in inventions I-VII will not be practiced together.

The inventions discussed above are independent and distinct, each from the other. They have acquired a separate status in the art as a separate subject for inventive effect and require independent searches. The search for each one of the above inventions is not coextensive particularly with regard to the literature search. Further, a reference that would anticipate the invention of one group would not necessarily anticipate or even make obvious another group. Finally, the consideration for patentability is different in each case. Thus, it would be an undue burden to examine all of the above inventions in one application. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification (i.e., Class and subclass), and their recognized diverse subject matter, they would illicit an undue burden on the examiner to search and examine all the inventions in groups I- VI in one single application. Furthermore, the criteria for patentability may not be same for each of the recited groups and what may be applicable for one group may not at all be applicable to other group. Thus, restriction for examination purposes as indicated is proper.

11. Applicants are advised that a reply to this requirement must include an identification of an invention elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicants will be entitled to consideration of additional

claims which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR §1.141. Currently, Claims 104, 116, 118 and 119 are generic claims. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

12. Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR §1.48(b). Any amendment of inventorship must be accompanied by a petition under 37 CFR §1.48(b) and by the fee required under 37 CFR §1.17(l).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571) 272-0923. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Terry McKelvey, can be reached on (571)-272-0775 Monday through Friday 8:30 A.M. to 5:00 P.M. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (i.e., PAIR) system. Status information for the published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (i.e., EBC) at: (866)-217-9197 (toll-free). Alternatively, status inquiries should be directed to the receptionist whose telephone number is (703) 308-0196.

Kailash C. Srivastava, Ph.D.
Patent Examiner
Art Unit 1655
(571) 272-0923

March 19, 2006